JUDGMENT OF THE COURT
9 JUNE 1982 [1]

Commission of the European Communities v Grand Duchy of Luxembourg

(Failure of a State to fulfil its obligations — Equal pay)

Case 58/81

Member States — Obligations — Implementation of directives — Failure to comply — Justification — Not possible
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from Community directives.

In Case 58/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Jean Amphoux, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

GRAND DUCHY OF LUXEMBOURG, represented by its Agent, Pierre Neyens, Principal Private Secretary to the Minister for the Civil Service, assisted by Paul Béghin, of the Luxembourg Bar,

defendant,

APPLICATION for a declaration that, by not adopting within the period prescribed in Article 8 (1) of Council Directive 75/117/EEC of 10 February

1 — Language of the Case: French.

1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women the measures necessary in order to eliminate discrimination in the conditions for the grant of household allowances to civil servants, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

Article 119 of the Treaty provides that: "Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work." "Pay" must be taken to mean, by virtue of the second paragraph of Article 119, the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives from his employer, directly or indirectly, in respect of his employment.

In order to give effect to the principle of equal pay, the Council adopted, pursuant to Article 100 of the Treaty, Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States (Official Journal L 45,

19. 2. 1975, p. 19). That directive was notified to the Member States on 12 February 1975. Article 3 of the directive provides that Member States are to "abolish all discrimination between men and women arising from laws, regulations or administrative provisions which is contrary to the principle of equal pay".

Pursuant to Article 4 of the directive Member States are to "take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the principle of equal pay shall be, or may be declared, null and void or may be amended".

Article 8 of the directive placed Member States under an obligation to put into force the laws, regulations and administrative provisions necessary in order to comply with it within one year of its notification and to inform the Commission thereof immediately.

In the Grand Duchy of Luxembourg, the head of household allowance is granted to State civil servants pursuant to the Law of 22 June 1963, as amended, laying down the scheme for remuneration of civil servants *(Mémorial A,* 1963, p. 563). Article 9 of that law is worded as follows:

"1. A civil servant having the status of head of household shall be granted a head of household allowance.

2. The followong shall be regarded as heads of household:

(a) a male married civil servant and also a female married civil servant whose husband is subject to an infirmity or serious illness rendering him incapable of providing for the household expenses or whose husband receives an income lower than the minimum social wage;

(b) a widowed civil servant of either sex;

(c) a civil servant of either sex who is legally separated or divorced;

(d) an unmarried civil servant of either sex:

(1) who has or has had several dependent children . . .

(2) who has the responsibilities of a head of household with respect to a relative by blood or marriage . . .

3. The head of household allowance shall be equal to 6% of the civil servant's basic remuneration but shall not be less than 18 index points or more than 22 points."

Municipal officials and employees are also affected since by virtue of the provisions of the Law of 28 July 1954 they receive the same household allowances, child allowances and other allowances of every kind as State officials and employees.

The Commission has noted similar provisions in collective employment agreements, for example those of insurance and bank clerks. Such collective agreements are given the force of law by the Grand Ducal regulations.

Being of the opinion that the Grand Duchy of Luxembourg had failed to fulfil its obligations under Article 119 of the Treaty and Directive 75/117/EEC,

the Commission decided to initiate the procedure provided for in Article 169 of the Treaty against the Grand Duchy of Luxembourg. Accordingly, by letter of 3 April 1979, it gave the Luxembourg Government an opportunity to submit its observations regarding the alleged failure to fulfil its obligations within a period of 60 days from the receipt of the letter. The Luxembourg Government submitted its observations to the Commission by letter of 6 June 1979. The Luxembourg Government stated that a draft law was being prepared in order to amend the Law of 22 June 1963 laying down the scheme for the remuneration of civil servants. The Government had also informed both sides of industry that in the future it would refuse to assign the force of law to collective agreements which maintained discriminatory conditions for the grant of household allowances and accommodation allowances. Negotiations were taking place, it was stated.

Noting that, although certain progress had been evident in the area of collective agreements, the legislative amendment referred to in connection with the conditions for the grant of a head of household allowance to civil servants had not entered into force, on 8 May 1980 the Commission issued a reasoned opinion pursuant to the first paragraph of Article 169 of the Treaty. That reasoned opinion was notified to the Grand Duchy of Luxembourg by letter of 19 May 1980. The Luxembourg Government replied by letter of 13 September 1980, indicating what progress had been made with the draft law. The Luxembourg Government also informed the Commission that both sides of industry had formally undertaken to eliminate the discrimination referred to above on renewal of those agreements, which it was envisaged would take place by 1 January 1981.

The present application, dated 12 March, was lodged at the Court Registry on 16 March 1981.

The written procedure followed the normal course.

Upon hearing the views of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claims that the Court should:

Declare that by not adopting within the period prescribed in Article 8 (1) of Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to application of the principle of equal pay for men and women the measures necessary in order to eliminate discrimination in the conditions for the grant of head of household allowances to civil servants, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 119 of the EEC Treaty and the provisions of the directive in question;

Order the Grand Duchy of Luxembourg to pay the costs.

The *Grand Duchy of Luxembourg* has not formulated any explicit conclusions.

III — Submissions and arguments of the parties

In its application, the *Commission* claims that the provisions of Article 119 of

the EEC Treaty and of Directive 75/117/EEC apply to the conditions for the grant of a head of household allowance, as provided for by the national provisions in question, to staff in the public sector. The fact that such staff are employed in a public sector cannot in any way call in question the applicability to them of Article 119 and of the above-mentioned directive. There is no doubt that the head of household allowance, as provided for in Article 9 of the Law of 22 June 1963, satisfies all the conditions for classification as a component of remuneration within the meaning of Article 119. It is in fact an advantage paid direct, in cash, by the employer to the staff concerned by reason of their employment.

The conditions for the grant of the head of household allowance, in their present form, constitute discrimination based on sex against married women.

The *Luxembourg Government* informs the Court that it intends to comply strictly with Article 119 of the EEC Treaty and with Directive 75/117/EEC.

The Government has indicated that in the private sector the collective agreements concluded recently have taken account of the directive. The agreement relating to bank clerks and that relating to insurance clerks, which were brought into force with effect from 1 July 1981, provide that the household allowance is to be granted to male and female employes without distinction.

The Luxembourg Government's determination to ensure effective application of the principle of equal pay as between men and women also applies to workers in the public sector. The remuneration of State civil servants is fixed by legislation. The Luxembourg Government describes in detail the stages of the draft law, which was removed from the agenda of the Chamber of Deputies on 4 July 1980 in view of difficulties of a legislative nature regarding determination of the head of household allowance in the case of half-time employment. Various formulas have now been adopted which are likely finally to settle the problem of the family allowance in the case of half-time work. Moreover, the Government is now considering ways in which to reduce the cost of the envisaged measure, which involves expenditure estimated by the tax inspectorate as 64 million Luxembourg francs, a considerable and, in view of the budgetary situation, onerous expense. At its meeting of 29 May 1981, the Government in Council decided to instruct a working party to work out a solution.

The *Commission* states in reply that those reasons cannot justify the continued application of provisions contrary to the principle of equal pay. As the Court has had occasion to point out on numerous occasions in its decisions, Member States may not justify a failure to comply with obligations and time-limits resulting from provisions of Community law by relying on internal difficulties or provisions of their own national laws even where those laws are constitutional in character.

The *Luxembourg Government* states that the text of the draft law now being prepared has already been approved by the staff representatives of the civil service and that it would probably be discussed by the Government in Council at one of its meetings in September, so that the legislative procedure may in any case be commenced during 1981.

IV — Oral procedure

At the sitting on 23 March 1982 oral argument was presented by Jean Amphoux for the Commission and by P. Béghin for the Luxembourg Government.

The Advocate General delivered his opinion at the sitting on 18 May 1982.

Decision

By application lodged at the Court Registry on 16 March 1981, the Commission of the European Communities brought an action, pursuant to Article 169 of the EEC Treaty, for a declaration that by failing to adopt within the period prescribed in Article 8 (1) of Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (Official Journal 1975, L 45, p. 19) the measures necessary in order to eliminate discrimination in the conditions for the grant of head of household allowances to civil servants, the Grand Duchy of Luxembourg had failed to fulfil its obligations under the EEC Treaty.

Pursuant to Article 8 of the directive, Member States were to put into force the measures necessary in order to comply with its requirements within one year of its notification, a period which expired on 12 February 1976.

The Grand Duchy of Luxembourg has not disputed the failure to fulfil its obligations with which it is charged but has confined itself to stating that the delay in adopting the measures necessary to comply with the directive in question resulted on the one hand from the need to enact legislation and, on the other hand, from the fact that implementation of the directive necessitated an assessment of the budgetary consequences. Moreover, it is necessary to make changes to the conditions applicable to part-time working, which involves discussions with the civil service representatives.

4 According to the well-established case-law of the Court, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from Community directives.

5 It must therefore be declared that by not adopting within the period prescribed in Article 8 (1) of Directive 75/117/EEC of 10 February 1975 the measures necessary in order to eliminate discrimination in the conditions for the grant of head of household allowances to civil servants, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EEC Treaty.

Costs

6 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

7 Since the Grand Duchy of Luxembourg has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by not adopting within the period prescribed in Article 8 (1) of Directive 75/117/EEC of 10 February 1975, the measures necessary to eliminate discrimination in the conditions for the grant of head of household allowances to civil servants, the Grand Duchy of Luxembourg has failed to fulfil one of its obligations under the EEC Treaty;**

2. Orders the Grand Duchy of Luxembourg to pay the costs.

	Mertens de Wilmars	Bosco	Touffait
Due	Pescatore	Mackenzie Stuart	O'Keeffe
Koopmans	Everling	Chloros	Grévisse

Delivered in open court in Luxembourg on 9 June 1982.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 18 MAY 1982 [1]

Mr President,
Members of the Court,

1. Subject-matter of the action

The Commission requests the Court to declare that the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 119 of the EEC Treaty and Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, by not adopting within the period prescribed by Article 8 (1) of the directive the measures needed to abolish discrimination in the conditions governing the entitlement of officials to the head of household allowance.

2. Relationship to other actions

These proceedings constitute the first action under Article 169 of the EEC Treaty concerning the principle of equal pay which the Commission has brought before the Court. The Commission has

1 — Translated from the Dutch.